



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings :

- against - :

Police Officer Kevin Castiglia :

Tax Registry No. 948759 :

Military and Extended Leave Desk :

FINAL

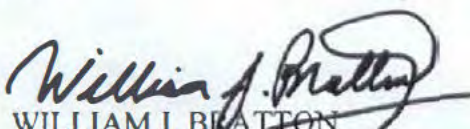
ORDER

OF

DISMISSAL
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Police Officer Kevin Castiglia, Tax Registry No. 948759, Shield No. 5600, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2014-12074, as set forth on form P.D. 468-121, dated August 22, 2014, and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Kevin Castiglia from the Police Service of the City of New York.


WILLIAM J. BRATTON
POLICE COMMISSIONER

EFFECTIVE: 0001 hrs. November 5, 2015



POLICE DEPARTMENT

October 19, 2015

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In the Matter of the Charges and Specifications : Case No.
- against - : 2014-12074
Police Officer Kevin Castiglia :
Tax Registry No. 948759 :
Military and Extended Leave Desk :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department:

Jessica Brenes, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent:

Michael Martinez
Worth, Longworth & London
111 John Street
New York, NY 10038

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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The above-named member of the Department appeared before me on July 21, 2015, charged with the following:

1. Said Police Officer Kevin Castiglia, on or about July 09, 2014, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did knowingly and unlawfully possessed [sic] a controlled substance, to wit: 5 (five) sublingual films of Suboxone.

P.G. 203-10, Page 1, Paragraph 5 - General Regulations

2. Police Officer Kevin Castiglia, on or about and between April 10, 2014 and July 10, 2014, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department in that said Police Officer without authority or police necessity ingested a controlled substance, to wit: Suboxone, also known as Buprenorphine. (*As Amended*)

P.G. 203-10, Page 1, Paragraph 5 - General Regulations

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. The Department called Dr. Thomas Cairns as a witness. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent readily admits to his misconduct but testified as follows in mitigation of the proposed penalty. At trial Respondent recounted that on October 6, 2012, he was performing a vertical patrol in a Housing Authority building when he heard

a commotion and smelled marijuana coming from the other side of the roof top door. As Respondent gave chase down the stairwell after a group of possible perpetrators, he slipped and fell down a flight of stairs, injuring his lower back. (Tr. 16-17)

Respondent was immediately taken to the hospital where he was diagnosed with herniated discs and prescribed [REDACTED] a pain medication. The next day he reported to the Medical Division and was placed on line of duty injury status. About one week later Respondent visited a spinal specialist who confirmed the diagnosis of four herniated discs. According to Respondent, the doctor prescribed [REDACTED] of [REDACTED] four times a day as well as physical therapy. Surgery was discussed as an option of last resort. (Tr. 18-20, 41, 71)

Respondent testified that this line of duty injury led to debilitating pain. After a month, Respondent returned to work on limited duty status. He continued physical therapy and the prescribed [REDACTED] routine. After approximately three months, he returned to full duty status. During this period the spinal specialist renewed his [REDACTED] prescription every month. (Tr. 19-22, 40)

After approximately one year of taking [REDACTED] very six hours, Respondent developed a tolerance for the drug and found himself taking extra doses. His prescription, however, did not change and he ran out of medication towards the end of each month. (Tr. 22, 42)

Respondent testified that he attempted to stop taking [REDACTED] because he believed he had become dependent on the drug. When he experienced incapacitating withdrawal symptoms, he conducted research and discovered that Suboxone was used to

treat opiate dependence. Respondent testified that Suboxone "sounded like a wonder drug." (Tr. 22-24, 45-46)

According to Respondent, he contacted Person A, a high school acquaintance who used Suboxone. Respondent claims that Person A offered him a dose. The Suboxone eased his pain and alleviated his withdrawal symptoms. He "felt normal" and "human again." Person A allegedly told Respondent that he was prescribed ninety doses a month, but only needed thirty. According to Respondent, Person A offered to share his doses if Respondent helped cover the co-pay. Beginning in early 2013, and for approximately one year thereafter, he allegedly paid Person A \$10 per 8mg dose and purchased between five and ten doses every two weeks. Respondent continued working on full duty status while taking Suboxone. Initially, Respondent took one 8mg dose of Suboxone per day, but after a period of time he started taking half a dose daily in an effort to wean himself off the drug. (Tr. 25-29, 49, 53-54)

Respondent explained that he did not seek a prescription from a doctor because he "was afraid that word would get back to the job" and that the Department would find out through insurance claims. He also expressed fear of being labeled an addict and added that he was "not raised that way." (Tr. 25-26, 44)

On July 9, 2014, Respondent returned from vacation and stopped at Person A's house to pick up Suboxone. Respondent testified that he paid Person A \$200 that day to "cover four months of copay" that he owed. Shortly thereafter, he was pulled over by an unmarked Internal Affairs Bureau vehicle. Five Suboxone doses were recovered from his car. He was arrested by Suffolk County Police and signed an admission statement. Respondent was suspended from duty as a result of the arrest. (Tr. 30-33, 53; Dept. Ex. 1)

The following day, Respondent reported to the Medical Division to be drug tested. He listed Suboxone on the Medical Division questionnaire he was required to complete before his hair and urine samples were collected. The samples tested positive for Suboxone. (Tr. 34; Dept. Exs. 2-3)

Respondent's criminal case is still pending. He is currently receiving pain management treatment, [REDACTED] Respondent testified that he has not taken either [REDACTED] or Suboxone since his arrest. (Tr. 55-56, 58)

On cross-examination, Respondent admitted that he acquired Suboxone from at least three other people. Respondent claims that Person A was the only person he paid for the drug and that the others were just "help[ing] him out." He could not recall, however, whether the other three had legally obtained their Suboxone via medical prescriptions. (Tr. 50-51)

The Department presented Dr. Thomas Cairns, the Senior Scientific Adviser at Psychomedics Corporation, as an expert in the field of toxicology. Dr. Cairns reviewed the laboratory data packages produced by Psychomedics and Quest Diagnostics for the samples collected from Respondent on July 10, 2014. It is undisputed that Respondent's hair and urine samples contained Buprenorphine, commonly known as Suboxone, as well as its metabolite, Norbuprenorphine. Psychomedics does not normally analyze samples for Suboxone, but tested Respondent's sample for the drug and its metabolite after being specifically requested to do so by the Department. Dr. Cairns explained that Respondent's samples contained "exceptionally low level[s]" of Buprenorphine and Norbuprenorphine, consistent with someone who was on Suboxone replacement therapy. (Tr. 60-64; Dept. Exs. 2-3)

Dr. Cairns explained that Suboxone was developed as an alternative to methadone as a treatment for opiate addiction. It is a Schedule 3 controlled substance governed by the Drug Enforcement Agency and may only be obtained through a physician specifically licensed by the government to prescribe it. (Tr. 67)

Dr. Cairns testified that Suboxone is a partial agonist. An agonist, "is a compound that activates receptors in the brain to receive [certain] molecule[s] and give [users] a euphoric high." As a partial agonist, Suboxone has the ability to occupy the same receptors in the brain that opiates do, without causing the same euphoric high and at the same time preventing withdrawal symptoms. It has become an effective alternative to methadone treatment which allows users to obtain a prescription and administer it at home rather than have to travel to a clinic for treatment each day. (Tr. 67-69)

Dr. Cairns explained, however, that Suboxone should only be prescribed under very controlled conditions because it has the potential to be abused. Some of the side effects include diarrhea, dizziness and "a loss of central logic" where the user is "completely random in [their] actions." Suboxone has the ability to give the user a "partial high" which is less intense than opiates. Prescription supplies not exceeding between seven and ten days, in addition to weekly urine screens, are important measures to monitor Suboxone use and prevent abuse. According to Dr. Cairns, self-administration of Suboxone to treat addiction without medical oversight does not work. He admitted, however, that based on the levels of Buprenorphine and Norbuprenorphine found in Respondent's hair and urine samples, he was adequately self-administering Suboxone. (Tr. 68-71, 75-76) Dr. Cairns added that he found it hard to believe that Respondent was

prescribed [REDACTED] for an entire year. According to Dr. Cairns, "[m]ost physicians understand that a powerful narcotic like [REDACTED] can easily lead to an addiction."

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 6, 2010. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

As Respondent has pled guilty, the only question to be addressed by this tribunal is whether dismissal from the Department is the appropriate penalty. There are many factors to be considered when determining whether a penalty should be mitigated. These include the nature and seriousness of the offense; the notice provided to the Respondent that the behavior was improper; the Respondent's past work record which includes the length of service and past performance on the job; the consistency of the penalty imposed for similar misconduct; and respondent's demonstration of an understanding of the wrongfulness of his actions and an ability to be rehabilitated.

Respondent argues that he should not be dismissed from the Department because his opiate dependency stemmed from a serious injury suffered while performing his duties as a police officer. Specifically, Respondent claims that he became addicted to the high doses of pain medication prescribed by his physician to alleviate the excruciating pain caused by four herniated discs. When Respondent realized that he had become addicted to his pain medication, he feared being labeled an addict and decided to wean

himself off the medication by self-medicating. Respondent explains that he was not taking Suboxone to get high, but was taking it to feel "normal" again. Dr. Cairns confirmed that he had low levels of Suboxone in his system at the time of testing.

This tribunal is sympathetic that Respondent suffered a debilitating line of duty injury and that he likely ingested Suboxone to relieve withdrawal symptoms when he attempted to stop taking prescribed painkillers. This case, however, is not about the use of Suboxone to treat an opiate dependency. This case is about how Respondent chose to obtain Suboxone. Instead of consulting a physician, Respondent opted to acquire this highly regulated controlled substance in an illegal manner from four separate individuals. In fact, he purchased Suboxone from at least one of those individuals in exchange for money. Even if Respondent's claim that he only reimbursed that provider for his "copays" is true, this is a mere rationalization for his illegal acts and not a factor that diminishes his culpability.¹

Moreover, this is not merely a situation where an officer's pride and fear of stigmatization got in the way of his better judgment. Respondent engaged in illegal activity and ingested a controlled substance for about one year while on full duty status. Although the risk might have been limited, this tribunal cannot ignore Dr. Cairns' testimony that Suboxone must be monitored because a "loss of central logic" where the user is "completely random in [their] actions" is a known side effect. In short, Respondent's choice put himself and the Department at risk. Choosing this path flies in the face of the prudence and discernment required of police officers.

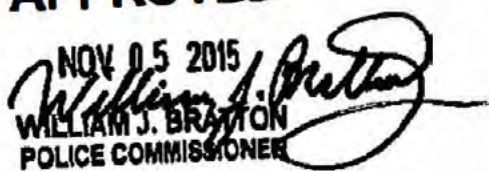
¹ This tribunal is also troubled that the day Respondent was arrested he paid \$200 for five Suboxone doses. This is much more than the \$10 he allegedly paid to cover his acquaintance's "copay." Respondent's excuse that on the day he was caught he was paying additional money that he owed did not have the ring of truth to it.

This tribunal notes that Respondent's employment record contains little to mitigate the penalty in this case. Similarly, Respondent's testimony that if he could go back in time, he would handle the situation differently does not outweigh the Department's strong interest in not employing individuals who illegally possess and ingest controlled substances. This is especially the case because all police officers are on notice that unlawful possession and ingestion of controlled substances cannot be tolerated and results in separation from the Department. *See Disciplinary Case No. 2010-1816 (2012)* (twenty-one-year police officer with no prior disciplinary record negotiated a penalty of 31 suspension days already served without pay, forfeiture of all time/leave balance, one-year dismissal probation, and file for service retirement for wrongfully ingesting/possessing methadone, being unfit for duty by consuming an intoxicant and alcohol); *Disciplinary Case No. 84798/08 (2012)* (nineteen-year detective with no prior disciplinary record forfeits 30 suspension days, all suspension days already served before trial, is placed on one year dismissal probation, and agrees to immediately file for vested-interest retirement for receiving Viagra from a person he knew was an unlicensed source)

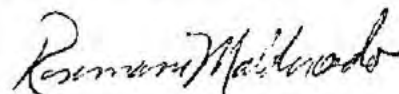
Police work requires officers to use good judgment on a daily basis. Respondent's actions demonstrate an inability to do so at the level required for this job. Accordingly, it is recommended that Respondent be DISMISSED from the Department.

APPROVED

NOV 05 2015
WILLIAM J. BRATTON
POLICE COMMISSIONER



Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trial

POLICE DEPARTMENT
CITY OF NEW YORK

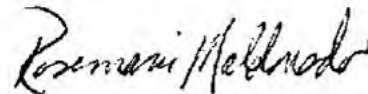
From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KEVIN CASTIGLIA
TAX REGISTRY NO. 948759
DISCIPLINARY CASE NO. 12074/14

Respondent received an overall rating of 3.0 on his three most recent annual performance evaluations. He has been awarded one medal for Excellent Police Duty. [REDACTED]

[REDACTED]

He has been suspended from duty since July 10, 2014 as a result of the charges and specifications in this case. He has no prior formal disciplinary record.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials